
BACKGROUND INVESTIGATIONS

Status: Active Policy
Effective Date: April 5, 2007 through April 4, 2009
Revised Date: N/A
Approved By: J. Stephen Fletcher, CIO
Authority: *UCA §53-10-108; UCA 63F-1-103; Governor's Executive Order: Directing the Chief Information Officer to Develop and Implement Policy Promoting Security of State Information and Information Systems*

14.1 PURPOSE

This policy provides a mechanism for the Department of Technology Services (DTS) to ensure the security of information and resources entrusted to its care, reduce the risk of liability to the State of Utah, and promote the trust of DTS customers.

14.1.1 Background

On December 11, 2001, the Governor of Utah issued an executive order directing the Chief Information Officer (CIO) to develop and implement policies that promote the security of State information and information systems. The CIO has determined that DTS must hire and retain qualified individuals whose criminal history will not adversely affect the confidentiality, integrity, or availability of information and resources maintained by the State of Utah.

14.1.2 Scope

This policy applies to all individuals employed by DTS and DTS contractors.

14.1.3 Exceptions

None.

14.2 DEFINITIONS

Conviction

A judgment by a criminal court on a verdict or finding of guilty after trial, a plea of guilty, or a plea of nolo contendere (no contest).

DTS Security Impact Designation

A specific information security impact level (i.e., None, Low, Moderate, High, or Critical) used to readily identify an information asset's security requirement(s).

Employee

For the purposes of this policy an employee is any individual employed by the Department or any individual who provides IT services and/or performs IT tasks for the Department in accordance with a contractual agreement (i.e., a contractor).

Position

A unit of employment associated with an employee that consists of a job title and a working title, a unique identification number, and a set of duties and responsibilities.

Standard Security Position

A position within DTS which has been designated as requiring a Standard Security Background Investigation. A Standard Security Position may have one or more of the following characteristics:

- access to secured state information
- access to a secured state information system
- access to a non-public area within a state facility
- access to an information asset with a DTS security impact designation of Low

Medium Security Position

A position within DTS which has been designated as requiring a Medium Security Background Investigation. A Medium Security Position may have one or more of the following characteristics in addition to the characteristics for a Standard Security Position:

- access to items of local, state, and/or national security interest
- access to information or an information system used for the care, custody, or control of children
- access to information or an information system used for the administration of financial accounts or accounting systems
- access to information or an information system used for providing health care to children or vulnerable adults
- access to private, controlled, or protected information
- access to an information asset with a DTS security impact designation of Moderate

High Security Position

A position within DTS which has been designated as requiring a High Security Background Investigation. A High Security Position may have one or more of the following characteristics in addition to the characteristics for a Medium Security Position:

- access to information used for the administration of criminal justice
- access to an information system used for the administration of criminal justice
- access to information security administration functions and/or systems
- access to the administration functions of a DTS or enterprise information technology system

- access to an information asset with a DTS security impact designation of High or Critical

Security Background Investigation

A search of state, interstate, and/or federal criminal history databases to determine if a selected applicant or an employee has an undisclosed criminal history.

Standard Security Background Investigation

A standard security background investigation includes a name, alias, and date-of-birth search of state criminal history databases, and is conducted by Department of Public Safety Bureau of Criminal Identification (BCI).

Medium Security Background Investigation

A medium security background investigation includes a name, alias, and date-of-birth search of state criminal history databases and a fingerprint-based check of Western Identification Network (WIN) fingerprint databases, and is conducted by BCI.

High Security Background Investigation

A High Security background investigation includes a name, alias, and date-of-birth search of state criminal history databases and a fingerprint-based check of WIN and United States Federal Bureau of Investigation (FBI) databases, and is conducted by BCI and the FBI.

Tangible Employment Action

For the purposes of this policy a tangible employment action is one or more of the following:

- acceptance of career mobility agreement
- acceptance of offer for employment
- appointment or reappointment to a position
- change of position responsibilities and/or duties
- hire or rehire
- promotion
- reassignment
- transfer

14.3 POLICY

It is the policy of the Department of Technology Services to employ an honest and ethical workforce. As a result, DTS shall conduct criminal background checks of all new hires and current department employees. For the purpose of this policy, any current State employee that actively seeks employment with DTS is considered to be a new hire.

- 14.3.1 At a minimum, all DTS employees shall undergo a background investigation every five years.

14.3.2 New Hire Background Investigation

DTS requires that all new hires undergo a background investigation upon a conditional offer of employment.

- 14.3.2.1 All applicants shall be provided notice during the hiring process that employment will be contingent upon the results of a background investigation.
- DTS HR shall provide applicants subject to a background investigation the above identified notice prior to the performance of a background investigation.
 - The criteria used for a background investigation shall be made available upon request. All requests for background investigation criteria shall be directed to the DTS HR Director.
- 14.3.2.2 Background investigations shall not be conducted without the written consent of the individual being investigated. Refusal to sign the disclosure and consent forms shall disqualify the individual from being considered for the position.
- 14.3.2.3 The Department shall pay all fees associated with the background investigation.
- 14.3.2.4 The type of background investigation performed shall be consistent with the position's security level designation (i.e., Standard, Medium or High). The scope and criteria of the background investigation shall also be based on established state and/or federal requirements for information security.
- 14.3.2.5 At a minimum, a background investigation shall include a criminal history review for:
- felony conviction;
 - misdemeanor conviction;
 - active warrant;
 - three or more arrests, citations or charges for which there is no disposition record.
- 14.3.2.6 Results of the background investigation will be sent to the Human Resource Director, or a designee. If the results indicate any of the criminal history criteria indicated in 14.3.2.5, the Human Resource Director, or a designee, will consult with the DTS Executive Director or designee to determine if the conditional offer of employment is to be withdrawn.

14.3.3 Current DTS Employee Background Investigation

DTS requires that all DTS employees undergo a background investigation in accordance with the criteria indicated in 14.3.1.

14.3.3.1 A DTS employee shall re-undergo a background investigation whenever:

- a tangible employment action occurs and the employee has not undergone a background investigation within the previous 2 years;
- a governing state and/or federal regulation (e.g., statutes, rules, orders, etc.) require employment background investigations to be performed on a more frequent basis; or
- the employee has violated a provision of the Department Code of Conduct policy.

14.3.3.2 All DTS employees shall be provided notice that retention of their position will be contingent upon the results of a background investigation.

- DTS HR shall provide all DTS employees subject to a background investigation the above identified notice prior to the performance of a background investigation.
- The criteria used for a background investigation shall be made available upon request. All requests for background investigation criteria shall be directed to the DTS HR Director.

14.3.3.3 Background investigations shall not be performed without written consent from the employee. Refusal to sign the disclosure and consent forms constitutes sufficient cause for the Department to discipline the employee as permitted by DHRM rule R477-11. Refusal to sign the consent form also constitutes sufficient cause for the Department to withdraw an offer for promotion or transfer.

14.3.3.4 The Department shall pay all costs associated with the background investigation.

14.3.3.5 The type of background investigation performed shall be consistent with the position's security level designation (i.e., Standard, Medium or High). The scope and criteria of the background investigation shall also be based on established state and/or federal requirements for information security.

14.3.3.6 At a minimum, a background investigation shall include a criminal history review for:

- felony conviction;
- misdemeanor conviction;
- active warrant;

- three or more arrests, citations or charges for which there is no disposition record.

14.3.3.7 Results of the background investigations shall be sent to the Human Resource Director, or designee. If the results indicate any of the criminal history criteria identified in 14.3.3.6, the Human Resource Director, or a designee, will consult with the DTS Executive Director or designee to determine if the employee is to be transferred to a different position within the Department or disciplined in accordance with DHRM rule R477-11. If such action is initiated, the employee shall be provided with sufficient summary of the criminal history and all other documents and information upon which the Department relied. The employee may view the actual criminal history record but not receive a copy unless received through the Right of Access process through the Department of Public Safety's Bureau of Criminal Identification. Utah Code Ann. §53-10-08.

14.3.4 Appeals

14.3.4.1 All employment decisions shall be based on the summary of the criminal history obtained from the Department of Public Safety's Bureau of Criminal Identification. If an employee believes their criminal record is in error, the Executive Director shall designate a reasonable period of time for the employee to correct their criminal record before issuing an employment decision. It is the individual's responsibility to obtain an error correction from the criminal record authority.

14.3.4.2 Schedule AT employees who are dismissed under the provisions of this policy do not have a right of appeal to the State's grievance process nor have a right to any severance pay.

14.3.4.3 Career Service employees may use the established grievance process to appeal any employment action taken as a result of the background investigation.

14.3.4.4 In accordance with the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information System Policy (FBI/UCJIS) all employee appeals involving a High Security Background Investigation background check must be handled by the Department of Public Safety's Bureau of Criminal Identification (the appointed state Criminal Justice Information System Agency).

14.3.5 Privacy

All information obtained from a background investigation shall be classified as confidential and protected from unauthorized disclosure. Only summary statistical

information that does not disclose the identification or conviction of the employee may be used in management reports.

14.4 PROCEDURES

14.4.1 Recruitment - All DTS recruitment announcements shall provide a statement informing applicants of the requirement for a criminal background investigation.

14.4.2 Criminal Background Investigations

14.4.2.1 The hiring official/employee's supervisor is responsible for informing job applicants, no later than during the formal interview process, of the requirement to undergo a criminal background investigation. The Department shall pay all costs associated with the criminal background investigation.

14.4.2.2 When required by the department, new hire and DTS employees must complete an "Application for Criminal History Record Review " form and the required fingerprinting process. Failure or refusal to complete this document constitutes sufficient cause for the Department to withdraw an offer of employment or initiate discipline as permitted by DHRM rule R477-11.

14.4.2.3 Results of the background investigation shall be provided to, and maintained by, the DTS Human Resource Office. This information is a confidential/ protected record and shared only with the Executive Director. Only summary statistical information that does not disclose the identification or conviction of the employee may be used in management reports.

14.4.2.4 The Executive Director in consultation with the HR Director shall determine if the results of the background investigation preclude a new hire or employee from continued employment or being moved to a different position within the department. Factors that will be considered include:

14.4.2.4.1 Whether the crime is related to an employee's current duties or might reasonably be expected to prevent an employee from performing the duties of the position or adversely affects the integrity of information resources maintained by the state.

14.4.2.4.2 Whether the conviction will adversely affect the trust of DTS customers and the citizens of the State of Utah.

14.4.2.4.3 The nature of the crime and the number of convictions.

- 14.4.2.4.5 The recency of the conviction.
- 14.4.2.4.4 The employee's conduct and demonstration of trust since the conviction.
- 14.4.2.4.5 False or misleading written statements, made by an applicant/ employee regarding their criminal record.
- 14.4.2.5 An employee's criminal record and the prospects for continued employment shall be discussed with the employee before any final decision is made. At a minimum the employee's director and the HR Director shall also participate in the discussion.
 - 14.4.2.5.1 All tangible employment action for career service (i.e., schedule B) employees shall be governed by applicable DHRM rule.
- 14.4.2.6 Generally, the department considers a criminal conviction that relates to an employee's duties to be sufficient cause for termination if it occurred within five years of the date of hire or of the last background investigation.

14.5 APPENDICES

- DTS Background Investigation Disclosure
- DTS Criteria for Background Investigations
- BCI Application for Criminal History Record Review
- BCI Request for Criminal History Information For Employment Purposes
- FBI Form FD-258

Forms contained in the appendices are for demonstration purposes only. Contact the Department Human Resources Technician for a current version.

DOCUMENT HISTORY

Originator:	J. Stephen Fletcher, CIO
Next Review:	February 20, 2009
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Reviewed By:	N/A



State of Utah
Department of Technology Services
1 State Office Building, Sixth Floor
Salt Lake City, Utah 84114
801-538-3833

DTS Form: 214 / Revised: 04/05/2007

Background Investigations Disclosure

Employee Name:

I understand the Department of Technology Services (DTS or Department) will request an investigative report to be generated on me which will include obtaining information regarding criminal history records from a criminal justice agency in any or all federal, state, city and county jurisdictions. I fully understand that the Department will submit my personal information to the Utah Bureau of Criminal Investigation in regard to the aforementioned criminal history investigation.

I understand that all information obtained from a background investigation shall be classified as confidential and protected from unauthorized disclosure. I also understand that before I am denied employment based, in whole or part, on information obtained in the background investigative report, I will be provided a reasonable opportunity to address the information contained in the report.

By signing this document I acknowledge that I have read and understand the above information, consent to a criminal history review of records to be performed for the Department by the Utah Bureau of Criminal Identification, and agree to abide by the requirements of Department policy and this agreement. I also authorize the Department to obtain and review criminal records and dispositions as part of their background investigation of my suitability for employment.

Employee/Applicant Signature

Date

HR Director (or designee) Signature

Date

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Utah Department of Technology Services
Criteria for Background Investigations

March 15, 2007

Version 1.0

The Department of Technology Services (DTS) must ensure the security of information and resources entrusted to its care, reduce the risk of liability to the State of Utah, and promote the trust of DTS customers. In order to achieve these objectives the department must hire and retain qualified individuals whose criminal history will not adversely affect the confidentiality, integrity, or availability of information and resources maintained by the State of Utah. An individual assigned to a DTS position may be removed from their position if their criminal background investigation reveals one or more unacceptable convictions.

Unacceptable Convictions – Standard Security Positions

The following convictions have been classified as incompatible with the mission and objectives of the department and are considered to be unacceptable for Standard Security Positions:

- Any felony conviction for offenses identified in:
 - Utah Title 76, Chapter 4
 - Utah Title 76, Chapter 5
 - Utah Title 76, Chapter 5a
 - Utah Title 76, Chapter 6
 - Utah Title 76, Chapter 6a
 - Utah Title 76, Chapter 7
 - Utah Title 76, Chapter 8
 - Utah Title 76, Chapter 9
 - Utah Title 76, Chapter 10, Part 1
 - Utah Title 76, Chapter 10, Parts 4 through 7
 - Utah Title 76, Chapter 10, Part 9
 - Utah Title 76, Chapter 10, Part 10
 - Utah Title 76, Chapter 10, Part 12
 - Utah Title 76, Chapter 10, Part 18
 - Utah Title 76, Chapter 10, Part 19
 - Utah Title 76, Chapter 10, Part 20
 - A criminal statute of any other state, the United States, or any district, possession, or territory of the United States which would constitute a felony as defined in this section if committed in Utah.
- Any Class A misdemeanor conviction for offenses identified in:
 - Utah Title 76, Chapter 4
 - Utah Title 76, Chapter 5
 - Utah Title 76, Chapter 6, Part 2
 - Utah Title 76, Chapter 6, Part 4
 - Utah Title 76, Chapter 6, Part 5
 - Utah Title 76, Chapter 6, Part 10

- Utah Title 76, Chapter 6, Part 11
- Utah Title 76, Chapter 7, Part 2
- Utah Title 76, Chapter 8
- Utah Title 76, Chapter 9
- Utah Title 76, Chapter 10, Part 1
- Utah Title 76, Chapter 10, Part 4
- Utah Title 76, Chapter 10, Part 5
- Utah Title 76, Chapter 10, Part 6
- Utah Title 76, Chapter 10, Part 12
- Utah Title 76, Chapter 10, Part 18
- Utah Title 76, Chapter 10, Part 19
- Utah Title 76, Chapter 10, Part 20
- Utah Title 76, Chapter 10, Part 24
- A misdemeanor conviction of a criminal statute of any other state, the United States, or any district, possession, or territory of the United States which would constitute a misdemeanor as defined in this section if committed in Utah.
- Any Class B misdemeanor conviction for offenses identified in:
 - Utah Title 76, Chapter 4
 - Utah Title 76, Chapter 5
 - Utah Title 76, Chapter 6, Part 2
 - Utah Title 76, Chapter 6, Part 4
 - Utah Title 76, Chapter 6, Part 5
 - Utah Title 76, Chapter 6a
 - Utah Title 76, Chapter 8, Part 2
 - Utah Title 76, Chapter 8, Part 3
 - Utah Title 76, Chapter 8, Part 4
 - Utah Title 76, Chapter 8, Part 5
 - Utah Title 76, Chapter 8, Part 9
 - Utah Title 76, Chapter 8, Part 12
 - Utah Title 76, Chapter 8, Part 13
 - Utah Title 76, Chapter 8, Part 14
 - Utah Title 76, Chapter 9, Part 1
 - Utah Title 76, Chapter 9, Part 2
 - Utah Title 76, Chapter 9, Part 4
 - Utah Title 76, Chapter 9, Part 5
 - Utah Title 76, Chapter 9, Part 7
 - Utah Title 76, Chapter 10, Part 1
 - Utah Title 76, Chapter 10, Part 4
 - Utah Title 76, Chapter 10, Part 7
 - Utah Title 76, Chapter 10, Part 9
 - Utah Title 76, Chapter 10, Part 10
 - Utah Title 76, Chapter 10, Part 18
 - A misdemeanor conviction of a criminal statute of any other state, the United States, or any district, possession, or territory of the United States which would constitute a misdemeanor as defined in this section if committed in Utah.

- Any violent felony conviction as defined in U.C.A. §76-3-203.5(1)(c), et seq.
- Any felony or misdemeanor conviction for offenses identified in Utah Title 76, Chapter 6, Part 7 (Utah Computer Crimes Act)
- Any felony or misdemeanor conviction of an offense identified in U.C.A. §76-6-102 (Arson), U.C.A. §76-6-105 (Causing a Catastrophe), U.C.A. §76-6-106 (Criminal Mischief), or U.C.A. §76-6-108 (Damage to or Interruption of a Communication Device).

Unacceptable Convictions – Medium Security Positions

The following convictions have been classified as incompatible with the mission and objectives of the department and are considered to be unacceptable for Medium Security Positions:

- Any felony conviction for offenses identified in:
 - Unacceptable felony conviction for a Standard Security Position
 - Utah Title 76, Chapter 10, Part 3
 - Utah Title 76, Chapter 10, Part 15
- Any Class A misdemeanor conviction for offenses identified in:
 - Unacceptable Class A misdemeanor conviction for a Standard Security Position
- Any Class B misdemeanor conviction for offenses identified in:
 - Unacceptable Class B misdemeanor conviction for a Standard Security Position
 - Utah Title 76, Chapter 8, Part 1
 - Utah Title 76, Chapter 10, Part 5
- Any Class C misdemeanor conviction for offenses identified in:
 - Utah Title 76, Chapter 4
 - Utah Title 76, Chapter 6, Part 4
 - Utah Title 76, Chapter 7
 - Utah Title 76, Chapter 8
 - Utah Title 76, Chapter 9, Part 2
 - Utah Title 76, Chapter 9, Part 7
 - Utah Title 76, Chapter 10, Part 5
 - Utah Title 76, Chapter 10, Part 15
- Any misdemeanor conviction of a criminal statute of any other state, the United States, or any district, possession, or territory of the United States which would constitute a misdemeanor as defined in this section if committed in Utah.

Unacceptable Convictions – High Security Positions

The following convictions have been classified as incompatible with the mission and objectives of the department and are considered to be unacceptable for High Security Positions:

- Any unacceptable conviction identified for a Standard and/or Medium Security Position

- Any felony conviction
- Any Class A misdemeanor conviction
- Any Class B misdemeanor conviction for offenses identified in:
 - Unacceptable Class B misdemeanor conviction for a Standard Security Position
 - Unacceptable Class B misdemeanor conviction for a Medium Security Position
 - Utah Title 76, Chapter 8, Part 8
 - Utah Title 76, Chapter 9, Part 3
 - Utah Title 76, Chapter 9, Part 7
 - Utah Title 76, Chapter 10, Part 3
 - Utah Title 76, Chapter 10, Part 11
 - Utah Title 76, Chapter 10, Part 12
 - Utah Title 76, Chapter 10, Part 13
- Any Class C misdemeanor conviction for offenses identified in:
 - Unacceptable Class C misdemeanor conviction for a Medium Security Position
 - Utah Title 76, Chapter 5
 - Utah Title 76, Chapter 9
 - Utah Title 76, Chapter 10